STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Legacy Owners Association, Appellant, **v.** **Warren County Board of Review,** Appellee.	**ORDER** **Docket No. 13-91-0497** **Parcel No. 63-170-05-0250**

On February 11, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. James V. Sarcone, III of Hubbell Realty Company, West Des Moines, Iowa represented appellant Legacy Owners Association and submitted evidence supporting its appeal. Assistant County Attorney Karla Fultz is counsel for the Board of Review. County Assessor Brian Arnold represented it at hearing. The Appeal Board now, having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Legacy Owners Association (The Association) is the owner of a residentially classified property located at 600 Colonial Circle, Norwalk, Iowa. The January 1, 2013, assessment for the property at issue was $411,200, allocated as $127,700 in land value and $283,500 in building improvement value.

The subject property is located in a planned, residential development known as The Legacy. The developer, Hubbell Realty Company, constructed the subject property improvements and then deeded the property to the Association. According to the property record card, the subject includes a 3004 square-foot, one-story, clubhouse built in 2003. The property is also improved by a 1500 square-

foot, commercial grade, swimming pool, a 416 square-foot shower/bath house, and metal fencing built in 2004. The improvements are located on 0.997-acres.

The Association appealed the subject's assessment to the Warren County Board of Review on the grounds that the property is assessed for more than authorized by law and that there was an error in the assessment under Iowa Code sections 441.37(1)(a)(2) and (4). The Association's error claim essentially reasserted that the property is over-assessed. The Board of Review denied the protest. The Association then appealed to this Board reasserting its claims.

The Association contends the value of the subject property should be nominal, or $0. The Association argues it owns the clubhouse as a nonprofit association and does not generate income. It asserts the value of the subject property was added to the value of each of the lots within The Legacy. It explained the clubhouse serves the Association members and the value of this common element is included in the lot values. The Association believes the members are already paying taxes on the value of the clubhouse through their individual property assessments. Therefore, the Association reasons the members are being subjected to double taxation and the proper remedy is to set the subject's assessment at a nominal value.

Hubbell Realty built the recreational improvements and amenities for restricted use by The Legacy members, their families, guests, and invitees. (Exhibit 4). These improvements were then transferred to the Association. Purchasers of individual residential property in The Legacy become members of the Association which, in turn, owns the recreational amenities. Testifying on behalf of the Association, James Sarcone contends property owners are essentially purchasing a share in the amenities, including the clubhouse and swimming pool. He argues the clubhouse and pool amenities are reflected in the owners' individual residential parcel values. Sarcone analogizes this with the method used to value common areas in condominiums that, under Iowa law, are assessed to the individual units.

Sarcone testified the Pro Forma for The Legacy for Plats 9 & 10 (Exhibit 1) shows that the cost of the clubhouse was spread to the lots in the development. He points to a comparison of lot sales prices from 2006 to 2012 purchase prices and 2013 assessments of lots located in The Legacy. (Exhibit 2). Because this exhibit compares 2006 to 2012 lot sales to 2013 land assessments, we do not find this evidence relevant.

Finally, Sarcone also believes the restrictions and conditions on the use of the Association's common property established in the Declaration significantly limits its ability to sell the property and renders the property's market value nominal. (Exhibit 4).

Jennifer Drake, counsel for Hubbell Realty, also testified for the Association. She explained the Pro Forma (Exhibit 1) was a financial projection for the developer, not a Homeowners Association (HOA) budget. Drake estimated roughly $1500 of each lot purchase was allocated to the cost of common areas improvements. She testified the 30% margin on costs represents profit for the investors.

Drake reported the HOA dues are used to maintain community area expenses such as utilities, snow removal, pool maintenance, and property taxes for the clubhouse. There are approximately 400 members in the Association and they each pay $350 annually in fees. The Association's budgets for fiscal years 2011-2013 suggest the HOA fee is derived from projected expenses.

Drake testified that the Association members are subject to the Declaration through the title to their individual residential parcel. The subject property is not part of a condominium or horizontal property regime and therefore the Association members are not deeded a percentage of the common areas. However, failure to pay HOA fees would result in a lien being placed on the delinquent Association member's property.

William Pruett of Rally Appraisal in West Des Moines, Iowa, testified on behalf of the Association. He reported the technique of paired sales analysis could be used to compare the value of

the surrounding properties in the Association with properties that lack the Association amenities. The difference in sales prices would reflect the value added to the individual properties within the Association due to the amenities. However, Pruett did not complete a paired-sales analysis. Nor did he offer an opinion of value for the subject property. We, therefore, give his testimony no consideration.

County Assessor Brian Arnold testified on behalf of the Board of Review. Arnold is a homeowner within The Legacy and a member of the Association. Arnold reported that whether the clubhouse operations generate income is not a proper inquiry for valuing residential property. He also believes the fact that homeowners may have "paid" for the clubhouse indirectly through their initial purchase does not mean it is not subject to assessment and taxation. Arnold distinguishes the initial purchase of the property from the ongoing expense of real estate taxes.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, all real property is subject to taxation unless it qualifies for an exemption. § 427.1, 427.13. Property subject to taxation is to be valued at its actual value as of January 1 of the year in which the assessment is made. Iowa Code §§ 428.4, 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller. *Id*. Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id*. If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered.
§ 441.21(2).

Unless subject to an exception, the assessor generally values property in fee simple interest. INT'L ASS'N OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION 14 (2d ed. 1996). Similarly, in the context of commercial properties subject to below market, long-term leases, Iowa courts have held that "the proper measure of the value of property is what the property would bring if sold in fee simple." *I.C.M. Realty v. Woodward*, 433 N.W.2d 760, 762 (Iowa Ct. App. 1988); *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419 (Iowa 1997). "The fee simple interest encompasses all rights in the property, free and clear of all encumbrances, except those reserved by the government." INT'L ASS'N OF ASSESSING OFFICERS, at 14. "Usually the assessor will be concerned with appraising all the rights that may legally be owned – that is, fee simple title." *Id*. at 39-40. *See Oberstein v. Adair Cnty. Bd. of Review*, 318 N.W.2d 817, 819 (Iowa App. Ct. 1982) ("All outstanding interests are taxed as a whole and measured by the value of the fee." (citing *Lucas v. Purdy*, 120 N.W. 1063, 1064-65 (Iowa 1909))).

In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject

property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

The Association argues that the subject property's assessed value should be nominal. In support of this claim, the Association essentially makes two arguments. First, it argues the value of the clubhouse and pool has been shifted to the properties in The Legacy. Assuming this to be true, the Association further contends the members are subject to double taxation as they pay real estate taxes for the common elements through their HOA fees and also pay higher taxes because of the increased value of their individual parcels. The Association's second argument is that the subject property has no market value because it is so encumbered that it could likely never be sold.

Notably, the Association did not provide any legal support from which this Board can conclude that its value-shifting theory is consistent with Iowa law, nor can we find any Iowa law that supports its argument. Further, the Association's argument appears to presume that the subject property, including the clubhouse and pool, retains no intrinsic value or that most of the value the subject once had has been completely transferred to the properties in The Legacy. In the absence of any evidence of the subject property's value, however, we do not believe the record supports such a finding.

We now turn to the Association's second argument. Iowa law has a preference for assessing property at its market value as determined in an exchange between a willing buyer and a willing seller. § 441.21(1)(b). This presumes not only that a seller is willing to sell a property, but also able to do so. The Association's argument is based on the assumption that it cannot sell the property due to the covenants and restrictions existing in the Declaration that would encumber its potential sale. Nonetheless, it stands to reason that if the Association extinguished any and all existing encumbrances, the Association would seek to sell the property for more than a nominal value. It is this value the assessment is attempting to capture: the exchange value between the Association, acting as a willing seller, and a willing buyer.

In the case of *Nedderman v. City of Des Moines*, the City similarly argued that under the applicable Code section at the time, § 7109, the Assessor should take into account an easement or restrictive covenant as it affects the actual value of lots in a subdivision that had been sold at a tax sale. 221 Iowa, 1352, 268 N.W. 36 (Iowa 1936). *See* Iowa Code § (1935) ("In arriving at [] actual value the assessor shall take into consideration . . . all other matters that affect the actual value of the property."). The City claimed the Assessor should account for the depreciative effect an easement or restrictive covenant has on a servient estate. *Id*. Conversely, the Assessor should also take into account the increased value of a dominant estate that benefits from a restrictive easement or covenant. *Id*. The Court stated that it could not be assumed that the Assessor took into consideration the dominant and servient estates nor did it appear § 7109 required the Assessor to trace out subdivided or qualified interests in arriving at actual value. *Id*. Likewise, we find no applicable and current statutory provision, administrative rule, or case law that requires the Assessor to investigate and take into consideration the encumbrances existing on a parcel in arriving at its assessment.

Rather, Iowa assessment law seeks to value the property's fee simple interest, free and clear of any encumbrances. The Association's argument that the subject's encumbrances adversely affect its market value seemingly values less than the fee simple interest in the property.

This is not to say that the subject property's unique attributes and characteristics may not reduce its market value. For instance, its location within a development or the more limited pool of potential buyers may reduce its market value. Nevertheless, the Association has presented no evidence valuing the subject property, such as an appraisal, to demonstrate what that impact could be.

Instead, the Association asks that this Board set the assessment at a nominal value, which would effectively render the subject exempt from property taxes. However, it did not supply any statutory provision, administrative rule, or case law under which this property could plausibly be found to be exempt or should be nominally valued.

Therefore, we find the Association has failed to show that the subject property is over-assessed.

The APPEAL BOARD ORDERS the 2013 assessment of the property owned by Legacy located at 600 Colonial Circle, Norwalk, Iowa, as set by the Warren County Board of Review is affirmed.

Dated this 6th day of June, 2014.

Jacqueline Rypma, Presiding Officer

Stewart Iverson, Board Chair

Karen Oberman, Board Member

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